

## 74-581

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 5.--DEPARTMENT OF AGRICULTURE

**74-581. Transfer of powers, duties and functions to department and secretary of agriculture.** Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a) All powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;

(b) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687 that relate to the powers, duties, and functions transferred under paragraphs (a), (b), and (c) above.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 1; Oct. 1.

## 74-582

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 5.--DEPARTMENT OF AGRICULTURE

**74-582. Successors to certain powers and functions of department and secretary of health and environment and director of division of health; application of documentary references; rules and regulations; orders and directives continued in effect until superseded.** (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to K.S.A. 2004 Supp. 74-581. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 2; Oct. 1.

## **74-583**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-583. Transfer of fund balances and assumption of liability for compensation and salaries by department.** (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 3; Oct. 1

## **74-584**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-584. Resolution of conflicts regarding disposition of property, powers, duties, functions, appropriations, personnel and records.** (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The department of agriculture shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions transferred to the department of agriculture. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 4; Oct. 1.

## **74-585**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-585. Rights preserved in legal actions and proceedings.** (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 5; Oct. 1.

## **74-586**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-586. Transfer of officers and employees; rights and benefits preserved.** (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of health and environment transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

**History:** Executive Reorganization Order No. 32, L. 2004, ch. 192, § 6; Oct. 1.

## **74-587**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-587. Food safety programs; authority relating to certain real property transferred to department.** On and after October 1, 2004, the Kansas department of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32, and the authority shall hold the same for and in the name of the state of Kansas. On and after October 1, 2004, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32 to acquire, hold or dispose of real property or any interest therein, the Kansas department of agriculture shall succeed to such power or authority.

**History:** L. 2004, ch. 147, § 1; July 1.

## **74-588**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-588. Same; transfer of employees.** Except as otherwise provided in this act, on October 1, 2004, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food and food service which are transferred by this act or by 2004 Executive Reorganization Order No. 32, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of the Kansas department of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

**History:** L. 2004, ch. 147, § 2; July 1.

## **74-589**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-589. Same; conflict resolution.** On and after October 1, 2004, when any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

**History:** L. 2004, ch. 147, § 3; July 1.

## **74-590**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-590. Same; disposition of records.** (a) On and after October 1, 2004, the Kansas department of agriculture shall serve as custodian for all agency records as defined by the Kansas open records act, related to those sections of chapter 36, article 5 and chapter 65, article 6, from which authority is transferred from the secretary of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian as defined by the Kansas open records act for all agency records related to chapter 36, article 5 and chapter 65, article 6 generated prior to October 1, 2004. A request for records generated prior to October 1, 2004, pursuant to the Kansas open records act may be made to the Kansas department of agriculture and it will be forwarded to the department of health and environment upon receipt.

(b) The department of health and environment will immediately make available to the Kansas department of agriculture upon request any records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of health and environment related to those functions transferred to the secretary of agriculture.

**History:** L. 2004, ch. 147, § 4; July 1.

## **74-591**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-591. Same; transfer of funds; creation of food safety fee fund.** (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made. On and after October 1, 2004, all such balances shall be deposited in the food safety fee fund and may be used to carry out the responsibilities and duties of the division of food safety of the Kansas department of agriculture, as established by this act.

(b) There is hereby created the food safety fee fund. The Kansas department of agriculture shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund. All expenditures from the food safety fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

**History:** L. 2004, ch. 147, § 5; July 1.

## **74-592**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-592. Same; communication between departments; consistent administration of regulation of food service establishments.** The secretary of agriculture and the secretary of health and environment shall provide for a mechanism for ongoing communication and access between the division of food safety, as established by this act, and the bureau of epidemiology at the department of health and environment. In exercising their respective authorities under K.S.A. 36-501 et seq., and amendments thereto, the secretary of agriculture and the secretary of health and environment shall apply consistent standards, policies, protocols and procedures in the licensing, inspection and regulation of food service establishments, taking into account the relative risk posed by such establishments to public health and food safety.

**History:** L. 2004, ch. 147, § 7; July 1.

## **74-593**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-593. Same; creation of division of food safety; organization.** (a) There is hereby established within and as a part of the Kansas department of agriculture, the division of food safety. The secretary of agriculture shall appoint a director of such division and such director shall be in the classified service of the Kansas civil service act.

(b) The secretary of agriculture may organize the division of food safety in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of this act or with the provisions of law, and the secretary may establish policies governing the transaction of business of the division of food safety within the department.

**History:** L. 2004, ch. 147, § 8; July 1.

## **74-594**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-594. Same; transferred programs baseline; report to legislature.** (a) The Kansas department of agriculture shall create a statistically based random selection of not less than 1,000 retail food stores which shall be inspected, documented and evaluated as a transferred programs baseline. The department shall include the results of the baseline inspections in the report required on January 31, 2006, in K.S.A. 2004 Supp. 74-595, and amendments thereto.

(b) On February 1, 2005, the Kansas department of agriculture shall report to the legislature the status of the baseline inspection program using 359 randomly selected retail food stores from subsection (a).

**History:** L. 2004, ch. 147, § 10; July 1.

## **74-595**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-595. Same; contents of report.** Not later than January 31, 2005, and January 31, 2006, the Kansas department of agriculture shall report to the house and senate committees on agriculture on the status of the transition. Such report shall be prepared in cooperation with the department of health and environment. The report shall include the steps taken to ensure that food safety resources are targeted at identifying, preventing and eliminating those concerns that constitute the greatest risk to public health and food safety. The report shall also include a description of what steps have been taken to engage stakeholders in the transition and in deciding what actions would tend to improve food safety.

**History:** L. 2004, ch. 147, § 11; July 1.

## 74-596

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 5.--DEPARTMENT OF AGRICULTURE

##### **74-596. Same; violations; penalties; misbranded or adulterated food; curative action.** (a)

Any person or entity who shall violate any of the provisions of this act and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(b) Any person or entity who shall violate any of the provisions of this act and amendments thereto or the rules and regulations adopted, in an intentional and reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions of this act and amendments thereto shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act by injunction.

**History:** L. 2004, ch. 147, § 12; July 1.

## 74-597

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 5.--DEPARTMENT OF AGRICULTURE

**74-597. Same; contracts for county enforcement; inspections; access to premises; search warrants.** The secretary of agriculture is hereby authorized and empowered to contract with the governing body of any county for the enforcement of all or any portion of the rules and regulations established under this act. Any county entering into a contract with the secretary to enforce such rules and regulations shall act as an agent of the secretary in carrying out such duties. Any inspection of any premises by officers, employees or agents of any such county, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary. For the purposes of carrying out the provisions of this act, the secretary of agriculture or the secretary's agent or the county or district attorney or their agents may enter any premises at any reasonable time, in order:

(a) To have access for the purpose of inspecting any premises, products or equipment subject to this act; or

(b) to inspect or sample food actually or reported to be adulterated or a threat to public health; or

(c) to inspect or investigate complaints of violations of this act; or

(d) to sample products.

Should the secretary of agriculture, the secretary's agent or the county or district attorney or their agents be denied access to any premises where such access was sought for the purposes authorized, the secretary of agriculture or the county or district attorney may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises for such purposes. The court may upon such application, issue the search warrant for the purposes requested.

The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary of agriculture is charged with the duty of enforcing all other provisions of this act.

**History:** L. 2004, ch. 147, § 13; July 1.

## **74-598**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

##### **74-598. Same; licenses; denial, suspension or revocation; grounds; hearing; appeal. (a)**

The secretary of agriculture may deny, suspend, revoke or modify the provisions of any license issued under this act, if the secretary finds, after notice and hearing, that the applicant or licensee has:

(1) Been convicted of or pleaded guilty to a violation of this act or any rule and regulation promulgated thereunder;

(2) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions of this act; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of this act.

(b) Before any license shall be suspended, modified, revoked or denied renewal, the secretary shall inform the applicant or licensee of the date and place of hearing upon such proposed revocation, denial or suspension.

(c) The licensee or applicant may appeal from the decision and order, in accordance with provisions of the act for judicial review and civil enforcement of agency actions.

**History:** L. 2004, ch. 147, § 14; July 1.

## **74-599**

### **Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES**

#### **Article 5.--DEPARTMENT OF AGRICULTURE**

**74-599. Same; designation of hearing officer.** Notwithstanding the provisions of K.S.A. 77-514, and amendments thereto, on and after July 1, 2004, with respect to hearings pursuant to K.S.A. 65-6a18 et seq., and amendments thereto, before the secretary of agriculture in accordance with the Kansas administrative procedure act, a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

**History:** L. 2004, ch. 147, § 16; July 1.